Disposition of abandoned embryos: a committee opinion

Ethics Committee of the American Society for Reproductive Medicine

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Programs should create and enforce written policies on the designation, retention, and disposal of abandoned embryos. In the absence of program-specific policies, it is ethically acceptable for a program or facility to consider embryos to have been abandoned if at least 5 years have passed since contact with an individual or couple, diligent efforts have been made to contact the individual or couple, and no written instructions from the couple exist concerning disposition. In such cases, programs may dispose of the embryos by removal from storage and thawing without transfer, though in no case should embryos deemed abandoned be donated to other couples or be used in research. This statement replaces the ASRM Ethics Committee document published in 2004 with the same name (Fertil Steril 2004;82:S253). (Fertil Steril® 2013;99:1848–9. ©2013 by American Society for Reproductive Medicine.)

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Couples or individuals undergoing in vitro fertilization who consent to cryopreservation of embryos usually state in writing their wishes regarding future disposition of cryopreserved embryos. In some cases, however, those couples or individuals have not stated their wishes and cannot be contacted to make their wishes known, posing a problem for an assisted reproduction program ("program") or storage facility ("facility") faced with continued storage of their embryos. Such embryos may be considered abandoned when an individual or couple with dispositional control cannot be contacted. Another form of abandonment would be when an individual or couple with dispositional control over stored embryos may simply affirmatively indicate to the program or facility that they do not wish to have anything further to do with the embryos, thereby effectively delegating dispositional control to the program or facility.

The actual cost per abandoned embryo to a storage facility will depend upon the size of the facility and the number of abandoned embryos stored (1). A smaller storage facility that stores only embryos may have significantly greater annual storage costs. Some data suggest that abandoned embryos comprise about 5%–7% of embryos stored in a facility (2). A more conservative estimate from a smaller program places this fraction at approximately 1% (3). The Society for Assisted Reproductive Technology (SART)-RAND study of data on 430 assisted reproductive technology (ART) practices with stored embryos in the United States revealed that almost 4% of nearly 400,000 embryos that were declared by responding practices were in storage for reasons that included: lost contact with the patient; abandoned, patient deaths; waiting 7 years to discard, waiting for shipment out, undecided about transfer to another state, waiting for a disposition decision, donate to research or to another couple, embryology training, wishes not specified on permit/no permit, divorce case—awaiting final decision, and awaiting transfer to long-term storage (4).

Because of the uncertainties that exist in such a situation, programs should require each individual or couple contemplating embryo storage to give written instructions concerning disposition of embryos in the case of death, divorce, separation, failure to pay storage charges, inability to agree on disposition in the future, or prolonged lack of contact with the program. Such an advance directive should occur prior to the first treatment cycle (5), or at the time of cryopreservation, or both (6). The cryopreservation consent form should state specifically that the program may dispose of embryos if no contact with the program has occurred for a specified period despite reasonable attempts by the program to make contact, and the responsible (i.e., having decisional authority) individual or couple have not kept the program informed of their current contact information. An individual or a couple with dispositional control may at any time alter any advance directions for disposition of embryos by submission of a new set of written directions for disposition of stored embryos.

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In cases in which written directions for disposition of embryos do not exist, and the relevant individual or couple cannot be located, a program will be faced with the possibility of continued storage indefinitely or disposal of embryos and absorbing the costs thereof. At present, the law does not give clear guidance on when it is lawful to discard abandoned embryos (7, 8), although it is reasonable to consider that the law will treat the embryos, after a certain passage of time, as abandoned. In the face of legal uncertainty, some programs might prefer to continue storage of abandoned embryos indefinitely. Other programs will find the risk of liability to be acceptable and dispose of embryos after a lengthy passage of time and unsuccessful efforts to contact those with dispositional control.

As an ethical matter, a program should be free to dispose of embryos after a passage of time and unavailability of a responsible individual or couple that reasonably indicates that the couple has abandoned the embryos. A program's willingness to store embryos does not imply an ethical obligation to store them indefinitely. An individual who, or couple that, has not given written instruction for disposition, has not been in contact with the program for a substantial period of time, has not provided current contact information, and who cannot be located after reasonable attempts by the program and facility, cannot reasonably claim an ethical violation on the part of the program or facility that treats the embryos as abandoned and disposes of them. This statement notwithstanding, the Committee recognizes the legal uncertainty surrounding a determination of abandonment and does not provide legal advice in this regard for the program or facility.

Programs should create and enforce written policies on the designation, retention, and disposal of abandoned embryos. In the absence of program-specific policies, it is ethically acceptable for a program or facility to consider embryos to have been abandoned if: at least 5 years have passed since contact with an individual or couple, diligent efforts have been made to contact the individual or couple, and no written instruction from the couple exists concerning disposition.

If a program reasonably determines under this standard that embryos have been abandoned, the Ethics Committee concludes that the program may dispose of the embryos by removal from storage and thawing without transfer. In no case should embryos deemed abandoned be donated to other couples or be used in research.

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This document was reviewed by ASRM members and their input was considered in the preparation of the final document. The following members of the ASRM Ethics Committee participated in the development of this document. All Committee members disclosed commercial and financial relationships with manufacturers or distributors of goods or services used to treat patients. Members of the Committee who were found to have conflicts of interest based on the relationships disclosed did not participate in the discussion or development of this document.

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